

REMARKS

This communication is responsive to the Office Action dated August 5, 2002. By this response, claims 24, 27-33, 35, and 37-39 have been cancelled without disclaimer. Sixteen (16) claims remain pending in the application -- 3 independent claims, and 13 dependent claims depending variously therefrom. Support for the amendments is found in the Specification and claims originally filed. No new matter is added by this Amendment.

A. Section 103 Rejections

All claims stand rejected under 35 U.S.C. § 103(a) based on various combinations of United States Patent Nos.: 4,120,031, issued June 27, 1977, ("Kincheloe"); 6,161,100, issued November 8, 1996, ("Saar"); and 5,943,656, issued December 3, 1997, ("Crooks").

More particularly, Claims 1, 2-8, and 36 stand rejected as being unpatentable over Kincheloe in view of Saar, and Claim 9 stands rejected as being unpatentable over Kincheloe in view of Saar, and further in view of Crooks.

Claims 21-26 and 37-39 stand rejected as being unpatentable over Kincheloe in view of Saar. This rejection is respectfully traversed. Nevertheless, as claims 27-33 and 37-39 have been cancelled without prejudice, this rejection is rendered moot with respect to these claims.

Claims 34 and 35 stand rejected as being unpatentable over a combination of Kincheloe and Crooks. Claim 35 has been canceled without prejudice, and therefore this rejection is rendered moot with respect to this claim.

Applicant respectfully submits that none of the cited references, taken alone or in combination, teach, suggest, or otherwise disclose each and every element of the claims as

amended. Furthermore, as discussed further below, Applicant respectfully submits that the prior art of record contains no suggestion or motivation to combine the references as proposed by the Examiner; it is only through the benefit of impermissible hindsight, using the inventor's claims as a roadmap, that the proposed combination could be made.

As a preliminary matter, Applicant notes that paragraphs 3 and 4 of the Examiner's Office Action are identical, and both only pertain to claim 1, so it is difficult to determine which arguments the Examiner is applying to claims 2-8. Nevertheless, it is clear that none of the cited references, taken alone or in combination, disclose each and every element of independent claim 1 as amended.

For example, neither Kincheloe nor Saar disclose a method for providing utility consumption data wherein the data is "electronically transmitted in substantially real time" from a utility meter to a data processing system as recited in independent claims 1, 21, and 34 as amended. That is, Kincheloe, describes a relatively simple "calculator-like" device that monitors energy consumption within a home. *See, e.g.*, Kincheloe Figure 1 and col. 3, lines 5-11. Users manually enter pricing information on a keypad on the device (col. 2, lines 8-11). The device is hard-wired (Figure 1, element 22) to a network of analog sensors that are present within the home's electrical wiring (*see, e.g.*, col 7, line 54 through col. 8, line 34). That is, the device is basically a single phase power monitor (Column 3, lines 23-28) or an energy cost monitor that can be placed in a room of a house (Column 19, lines 65-68, Column 20, lines 1-26, and Columns 41 and 42). Accordingly, the Kincheloe device is not a real-time remote monitoring device at all, but rather monitors electricity consumption at the site where the device is located.

In paragraph 13 of the Office Action, and in various prior paragraphs, the Examiner cites Kincheloa at column 2, lines 2-55 for details pertaining to nearly every dependent claim, including the "real-time" element originally present in various dependent claims as filed (and now incorporated into the independent claims.) Applicant is at a loss as to which section of this column the Examiner is referring. There is no mention of real-time operation. In fact, Kincheloa merely suggests that the print-out of meter data may be printed out "at the end of each billing period." (Col. 2, lines 26-27.) This can hardly be considered "real-time." Furthermore, this "print out" can hardly be considered electronically transmitting data from the utility meter to a data processing system, as recited in the claims as amended.

This is not surprising, as the Kincheloa reference contains absolutely no reference whatsoever to a central data processing system that communicates substantially in real time with a remote meter via a communications medium, nor does it contemplate providing pricing information to the consumer via a communications medium. The Kincheloa calculator-like device could not be modified to incorporate a data processing system communicating with a remote meter via a communications medium, as recited by the amended claims. Such a modification would not be possible because such functionality would have been far beyond the scope of the disclosure, and because a modification would defeat Kincheloa's purpose of providing a convenient on-site monitoring device for a single home. Accordingly, Kincheloa does not expressly or impliedly disclose each and every element of the present claims.

The Saar reference similarly fails to expressly or impliedly disclose all elements of the claims 1, 21, and 34. Saar describes a system for tracking water usage of individual units within a multi-unit housing building. The Saar device includes a number of volumetric flow

sensors equipped with wireless transmitters so that water flow information can be compiled for each unit in a multi-tenant housing facility at a receiver. Importantly, the bulk of the Saar disclosure is concerned with describing the sensor device; only a brief portion of the Saar disclosure is dedicated to describing the functionality of the receiving unit.

The only descriptions of a billing system in the Saar reference can be found the last clause of the Abstract and in a single sentence at column 5, lines 39-47, where it is stated without elaboration that "bills for water, energy and sewer use for each reporting unit . . . can be sent directly to the individual units." This reference does not suggest or describe the manner in which such information is "sent," nor does it provide any elaboration other than that a bill can be sent along with reporting of leaks or open faucets. Thus, there is no disclosure, for example, of a system that sends metering data in substantially real time to a data processing system.

Moreover, the information provided by the Saar system is limited to a monthly billing statement -- there is no suggestion that data could be provided in a format that would allow the user to manage energy costs by shifting production times, seeking alternate sources of energy, or the like. These options would have no purpose in the Saar system, which is concerned merely with assigning utility costs to the various units in a multi-unit housing facility. Further, the Saar reference fails to disclose the provision of real-time data as recited in dependent claims 24 and 31.

In rejecting claim 9, the Office Action essentially repeats past Office Actions by arguing that "[i]t would have been obvious to a person of ordinary skill to combine the teaching in Kincheloe, Saar, and Crooks in order to obtain a more efficient method of measuring, billing and receiving payments for electricity."

The Crooks reference is limited to disclosing a bill payment system, and is in no way concerned with gathering metering information. Accordingly, the elements of Applicant's claims that are not present in the Kincheloa/Saar combination are similarly not provided in the Kincheloa/Saar/Crooks combination.


In the Response to Arguments section, ¶ 14, the Examiner states that "obviousness is in a sense necessarily a reconstruction based on hindsight reasoning." The Examiner has apparently block-copied this argument so that the exact text appears twice in this section, once with no citation (more precisely, a partial citation), and a second time with a citation to In re McLaughlin. In any event, this argument is unavailing, as it is well-settled that a combination of references cannot be cited unless some teaching, suggestion or motivation to combine the references exist. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). In the present case, there is no suggestion whatsoever to combine the Kincheloa and Saar references to arrive at the present invention. Each reference is complete unto itself, and contains no express suggestion to modify the teachings therein to arrive at (or even approach) the present invention. The references address diverse technological problems such as how to provide a local monitoring device and how to apportion water costs between tenants in multi-unit housing.

Neither reference would solve the problem provided by the present system, which allows users to manage utility costs by altering production schedules, obtaining energy from alternate sources, and the like. Accordingly, it is highly unlikely that even a person skilled in the art would seek to combine the two references without using the teaching of the present disclosure. Indeed, the lack of closer art in the relatively crowded field of utility services argues strongly in favor of non-obviousness, and therefore patentability.

B. Conclusion

Applicant respectfully submits that the present application is in condition for allowance, and earnestly solicits a Notice of Allowance at the Examiner's earliest convenience. The Examiner is invited to telephone the undersigned if such would advance prosecution of this Application in any way.

Dated this 5th day of February, 2003.

By 
Daniel R. Pote
U.S. Reg. No. 43,011

SNELL & WILMER L.L.P.
One Arizona Center
Phoenix, AZ 85004-2202
Phone: (602) 382-6325
Fax: (602) 382-6070
dpote@swlaw.com

Version of Claims showing Changes Made

1. A method for providing utility consumption data to a utility consumer, the method comprising the steps of:

receiving metering data from a utility meter located at a remote facility operated by said utility customer, wherein said metering data is electronically transmitted in substantially real time from said utility meter to a data processing system;

calculating billing data using said metering data at said data processing system;

storing said metering data and said billing data electronically at said data processing system; and

reporting said metering data and said billing data electronically from said data processing system to said utility customer.

21. A method for reducing utility costs at a remote facility associated with an utility consumer, the method comprising the steps of:

receiving consumption information at a data processing system in substantially real time from a meter located at said remote facility;

receiving price factors at said data processing system;

calculating utility cost at said data processing system as a function of said consumption information and of said price factors; and

providing said utility cost from said data processing system to said utility consumer such that said utility consumer is allowed to thereby manage said utility cost for said remote facility.

34. A system for providing energy consumption data for a facility affiliated with an energy consumer, the system comprising:

a receiving means configured to receive metering data in substantially real time from a meter located at said facility via a digital network;

a processing means in communication with said receiving means, wherein said processing means is configured to determine pricing options as a function of said metering information and of pricing factors affiliated with an energy source;

a transmitting means configured to transmit said pricing options to said energy consumer via said digital network such that said energy consumer is allowed to evaluate said pricing options to thereby manage energy consumption at said facility.